

ENTERED

April 01, 2021

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

RICHARD SCOTT SHAFER,

Plaintiff,

VS.

LORIE DAVIS, *et al.*,

Defendants.

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CIVIL ACTION NO. 2:20-CV-167

ORDER ADOPTING MEMORANDUM AND RECOMMENDATION

Before the Court is Magistrate Judge Jason B. Libby's Memorandum and Recommendation (M&R), entered on March 4, 2021. (D.E. 44). The M&R recommends that the Court deny Defendants Sergeant Nestor S. Ochoa ("Ochoa") and Lieutenant Javier Muro's ("Muro") motion to dismiss (D.E. 34), grant Defendant Warden Evelyn Castro's ("Castro") motion to dismiss (D.E. 35) and dismiss Plaintiff's claims for injunctive relief against Defendant Castro in her official capacity for lack of subject matter jurisdiction. (D.E. 44, p. 11–12).

The parties were provided proper notice of, and the opportunity to object to, the Magistrate Judge's M&R. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b); General Order No. 2002-13. No objection has been filed. When no timely objection has been filed, the district court need only determine whether the magistrate judge's memorandum and recommendation is clearly erroneous or contrary to law. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989) (per curiam); *Powell v. Litton Loan Servicing, LP*, No. CIV. A. H-14-2700, 2015 WL 3823141, at *1 (S.D. Tex. June 18, 2015).

Having carefully reviewed the proposed findings and conclusions of the Magistrate Judge, the filings of the parties, the record, and the applicable law, and finding that the M&R is not clearly erroneous or contrary to law, the Court **ORDERS** the following:

- (1) The Court **ADOPTS** the M&R in its entirety. (D.E. 44).
- (2) Defendants Ochoa and Muro's motion to dismiss is **DENIED**. (D.E. 34).
- (3) Defendant Castro's motion to dismiss is **GRANTED**. (D.E. 35).
- (4) Plaintiff's claims for injunctive relief against Defendant Castro in her official capacity are **DISMISSED** for lack of subject matter jurisdiction and the Clerk of Court is **DIRECTED** to **TERMINATE** Castro from the docket sheet.
- (5) Plaintiff's excessive force claims against Ochoa and Muro in their individual capacities are **RETAINED**.

SO ORDERED.



DAVID S. MORALES
UNITED STATES DISTRICT JUDGE

Dated: Corpus Christi, Texas
April 1, 2021